

ADVISORY COMMITTEE ON RULES
June 4, 2003

Supreme Court Conference Room
Frank Rowe Kenison Supreme Court Building
Concord, New Hampshire

Honorable Linda S. Dalianis, Chairman, called the meeting to order at 12:20
p.m.

The following Committee members were present:

Robert L. Chase
Hon. Linda S. Dalianis
Hon. Robert L. Cullinane
Hon. Richard A. Hampe
Martin P. Honigberg, Esquire
Hon. Philip Mangones
Jack B. Middleton, Esquire
Emily G. Rice, Esquire
Raymond W. Taylor, Esquire

Also present were David S. Peck, Secretary to the Advisory Committee on
Rules, and Margaret Haskett, staff.

On motion of Attorney Middleton, seconded by Mr. Chase, the Committee
approved the minutes of the March 19, 2003 meeting as submitted.

In preparation for the public hearing at 1:00 p.m., written comments were
distributed to members.

With respect to action taken by the Supreme Court since the Committee's last
meeting, David Peck reported that the Supreme Court issued orders adopting the
Committee's recommendations to amend Superior Court Rule 170 and District and
Municipal Court Rules 1.3G and 3.13. The Court, however, did not adopt the
Committee's recommendation to amend, on a temporary basis, Supreme Court Rule
50-B relative to reporting requirements for lawyers. Judge Dalianis reported that the
Supreme Court is considering amending some of its rules in preparation of going to a

new system for accepting appeals. She stated that the public comment period for the amendments ended in May and that if the rules are adopted, they will be referred to this Committee for its review and recommendations.

Attorney Honigberg arrived at the meeting.

The Committee next discussed the status of items still pending before the Committee and the following action was taken:

Relative to administrative orders prepared by administrative judges, Attorney Rice reported that fewer administrative orders are being issued and that concerns about public access expressed by the Court and others have been resolved because of access to the rules on the Judicial Branch's website. She reported that the subcommittee is turning its focus to the various guidelines, procedures, protocols and other miscellaneous documents to determine if any should be promulgated as a rule.

Relative to comments to the Professional Conduct rules, David Peck reported that the N.H. Bar Ethics Committee continues to work on preparing comments.

Relative to amendments to Superior Court Rules 48-B and 169 pertaining to entry fees in marital cases, following discussion of David Peck's draft amendments, and on motion of Judge Hampe, seconded by Attorney Rice, the Committee voted to further amend Superior Court Rule 48-B and to recommend to the Supreme Court that Superior Court Rules 48-B and 169 be adopted, effective July 1, as amended and contained in Appendices A and B of these minutes. With reference to the protocols prepared by the Superior Court Marital Mediation Committee, the Committee referred the protocols to Attorney Rice's subcommittee to determine whether they should be promulgated as rules.

Relative to amendments to Superior Court Rule 78 pertaining to media access to court proceedings, Attorney Taylor reported that one of the N.H. Bar subcommittees hopes to have a draft amendment to the rule available for the Committee's next meeting.

Relative to amendments to Superior and District Court rules governing joinder and severance of criminal offenses for trial, following a brief discussion and review of Attorney Christopher Johnson's May 15, 2003 letter, the Committee agreed to take no further action now, but further agreed that it would consider any amendments to the rules governing joinder and severance that the Attorney General's office may wish to submit.

The meeting adjourned so members could attend the public hearing scheduled for 1:00 p.m. in the courtroom. During the public hearing, the Committee heard testimony on proposed court rules changes. The Committee took no action during the public hearing.

Following the public hearing, the Committee then discussed, after hearing comments at the public hearing, what action it wished to take on the proposed rules changes. Following discussion and on motion of Attorney Rice, seconded by Attorney Honigberg, the Committee voted to recommend to the Supreme Court that Supreme Court Rules 24, 37, 38 subsection A and C; Superior Court Rule 86; Superior Court Administrative Rules 12-1, 12-3, 12-4, 12-7, 12-8, 12-9; 12-11, 12-12, 12-13, 12-14, 12-16, 12-17, 12-18, and chapter 13; District and Municipal Court Rule 3.22; and Probate Court Rule 86 be adopted as submitted to the public hearing and that Supreme Court Rule 37A be adopted as further amended by the Committee following public comment. In addition, relative to Supreme Court Rule 50-B pertaining to the

professional liability insurance certification requirement, the Committee requested that David Peck re-draft the rule to address concerns raised in Attorney Eileen Fox's June 4, 2003 letter and in Attorney James DeHart's June 3, 2003 e-mail for the Committee's consideration at its next meeting.

Relative to Character and Fitness standards, following discussion of Attorney David Bradley's October 7, 2002 letter and Margaret Fuller's May 13, 2003 e-mail, the Committee requested that David Peck prepare a draft amendment incorporating similar standards to those in effect in Minnesota and other revisions, and to send said draft to the Committee on Character and Fitness for its review and comment.

Relative to amendments to Supreme Court Rule 42(10)(a)(iv)(B) pertaining to the practice of law referred to the Committee by the Supreme Court, on motion of Attorney Middleton, seconded by Judge Cullinane, the Committee voted to recommend to the Supreme Court that Supreme Court Rule 42(10)(a)(iv)(B) be adopted on a permanent basis as contained in Appendix C of these minutes.

Relative to amendments to Rule 1.17 of the Rules of Professional Conduct, following a review of a motion filed by Attorney William Ritchie, the Committee voted to make no changes to Rule 1.17 of the Rules of Professional Conduct.

Relative to amendments to Supreme Court Rules 12-D(2), 16(11), 21(1) and 26(1), following discussion, the Committee requested that David Peck further amend the amendments to address concerns raised by Committee members.

Relative to amendments to District Court rules pertaining to copies of pleadings in district court, following review of Attorney Mark Larsen's April 2, 2003 letter, the Committee requested that David Peck draft amendments to the rules to address concerns raised in Attorney Larsen's letter for consideration at its next meeting.

Relative to amendments to Superior Court Rule 98 pertaining to discovery in criminal cases, following discussion, the Committee requested that David Peck draft an amendment to Superior Court Rule 98 to address concerns raised in State v. Gamester.

Relative to amendments to Superior Court Administrative Rule 12-6 pertaining to appointment of marital masters, following discussion and on motion of Attorney Middleton, seconded by Judge Cullinane, the Committee voted to recommend to the Supreme Court that Superior Court Administrative Rule 12-6 be amended as suggested in Judge Philip Mangones' May 19, 2003 letter.

Relative to amendments to District Court Rule 1.21(6) pertaining to periodic payments, following discussion and on motion of Judge Hampe, seconded by Attorney Taylor, the Committee voted to recommend to the Supreme Court that District Court Rule 1.21(6) be amended as contained in Appendix D of these minutes.

Relative to the tabled item pertaining to Supreme Court Rules 47, 48, and 48-A, Attorney Taylor stated that the subcommittee expects to have a draft amendment for the Committee's review at its next meeting.

The Committee scheduled its next meeting for September 3, 2003 at 12:00 p.m. in the judges' conference room of the New Hampshire Supreme Court building.

No further business to come before the Committee, on motion duly made and seconded, the meeting adjourned at 2:47 p.m.

APPENDIX A

Adopt new Supreme Court Rule 48-B as follows:

RULE 48-B. MEDIATOR FEES

(1) Scope. The provisions of this rule shall apply only to proceedings in which the parties are ordered to participate in mediation under RSA 458:15-a.

(2) Fees.

(a) Indigent cases. In the event both parties are indigent, the mediator shall be paid a set fee of \$300.00 for his or her services if one or more sessions occur. The court may order each party to pay a proportional amount of said fee. The fee shall be paid from the special fund established pursuant to RSA 458:17-b and repaid by the parties in accordance with RSA 458:17-e.

(b) Other cases. In cases that do not qualify as indigent, the fee shall be \$60.00 per hour. The fee shall be a charge against the parties in a proportional amount as the court may determine.

(c) Missed sessions. In indigent cases, if the parties, or either of them, fail to appear for the first session with the mediator, the mediator shall be paid \$120.00 from the special fund in lieu of the \$300.00 set fee. In other than indigent cases, if the parties or either of them fail to appear for any session with the mediator, the mediator shall be paid \$120.00 for the missed session. The court may allot the responsibility for paying the mediator or reimbursing the state for fees for missed sessions between the parties, as justice requires.

APPENDIX B

Amend Superior Court Rule 169 by deleting said rule and replacing it with the following:

169. Fees.

(I) The appropriate fee must accompany all filings. All fees shall be consolidated into a single payment, when possible.

(II) 32.8% of the entry fee paid in each libel and petition in marital cases (\$41.00) shall be deposited into the special fund established by RSA 458:17-b. Said fund is for the compensation of mediators, appointed pursuant to RSA 458:15-a, and guardians ad litem, appointed pursuant to RSA 458:17-a, when the parents are indigent.

(III) (A) Original Entries:

(1) Original Entry of any Action at Law or Equity except a petition for writ of habeas corpus; Original Entry of all Marital Matters, including Order of Notice and Guardian ad Litem Fee; Transfer; the filing of a foreign judgment pursuant to RSA 524-A; or any Special Writ	\$ 125.00
(2) Original Entry of a petition for writ of habeas corpus	\$ 0 (no fee)
(B) Small Claim Transfer	\$ 90.00
(C) Motion to Bring Forward (post judgment)	\$ 50.00
(D) Petition to Annul Criminal Record	\$ 50.00
(E) Wage Claim Decision	\$ 25.00
(F) Marriage Waiver	\$ 25.00
(G) Motion for Periodic Payments	\$ 15.00
(H) Original Writ (form)	\$ 1.00
(I) Divorce Certificate (VSR) only Divorce Certificate, Certified Copy of Decree and if applicable, Stipulation, QDRO, USO,	

and other Decree-related Documents \$ 15.00

(J) Certificates and Certified Copies \$ 5.00

(K) All Copied Material \$.50/page

(IV) On the commencement of any custody or support proceeding for which a fee is required, including libels for divorce with minor children, an additional fee of \$2.00 shall be paid by the petitioner.

APPENDIX C

Amend Supreme Court Rule 42(10)(a)(iv)(B) on a permanent basis by deleting said subsection and replacing it with the following:

(B) been primarily engaged in the active practice of law, for five of the seven years immediately preceding the date upon which the motion is filed, in states, territories, or the District of Columbia that allow admission without examination of persons admitted to practice law in New Hampshire under circumstances comparable to those set forth in this rule;

APPENDIX D

Amend District and Municipal Court Rule 1.21(6) by deleting said subsection and replacing it with the following:

(6) The court may prescribe the times, places, amounts of payments and other details in making any order. The court may at any time review, revise, modify, suspend or revoke any order. Failure to obey any lawful order of the court without just cause shall constitute a contempt of court. Contempt proceedings maybe initiated by the judgment creditor by motion or affidavit of noncompliance (Form I) and will result in the issuance of an order of notice to appear before the court to show cause why the defendant should not be held in contempt of court. The judgment creditor shall cause the order of notice to be served either in-hand or by certified mail, restricted delivery, return receipt requested. If the judgment creditor elects to serve the order of notice by certified mail, restricted delivery, return receipt requested, and if the return receipt is returned without indication that the order of notice has been properly served, then in-hand service shall be required.